IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1168 OF 1996
IN
SUIT NO. 423 OF 1989

Punjab National Bank ..Plaintiffs

Vs.

Mohan Gandhi and Ors. ..Defendants

Mr.S.A.Bhalwal a/w Mr.C.D.Patel a/w Usha Singh i/b Vyas and Bhalwal for the plaintiffs

Mr.Pravin Kadam i/b Manoj Khatri for the defendants

**CORAM : S.U.KAMDAR, J**
**DATED : 7TH OCTOBER, 2005**

P.C.:

1. The present Notice of Motion is taken out for setting aside the order of dismissal dt.22.4.94 passed by his Lordship Justice S.H.Kapadia for want of appearance. The suit is of 1989 and due to the default on the part of the plaintiffs suit was required to be dismissed on 22.4.94. This motion is of 1996 is lying in the Registry and it is utter callousness on the part of the plaintiffs in prosecuting the present litigation. The said motion is never taken up for hearing though 9 years have expired with the result the motion for restoration of the suit is pending in this court for the last 9 years. At the outset I was not

inclined to restore the said suit but keeping in mind the two factors that (1) explanation furnished by the plaintiffs in affidavit in support that the non appearance was due to the reorganisation of the plaintiff bank and (2) ultimately it is the question of public money which would be seriously affected that I am inclined to take liberal view in the matter.

2. The learned counsel for the plaintiffs has persuaded me to take such a lenient view of the matter by stating taht he will pay the cost of Rs.50,000/- in the present notice of motion. Keeping in mind the aforesaid circumstances, I exercise my discretionary power to restore the suit with aforesaid condition. Cost of Rs.50,000/- to be paid within one week to the Maharashtra State Legal Services Authority. Plaintiffs advocate is directed to produce receipt along with the precipe and file in the office of the Prothonotary and Senior Master, High Court, Mumbai. It is only on payment of such cost that motion will stand allowed in terms of prayer clause (a) and Suit will stand restored. If amount is not so paid within 15 days

motion to stand dismissed without any further reference to the court. Certified copy expedited.